

Attorneys for Bob and Kathleen Krucker

OF THE STATE OF IDAHO

PERMIT NO. 36-7505

beneficial use, and (3) the lapse was due to an error or mistake of IDWR.

I. BACKGROUND

the permit holder to submit proof of beneficial use. The Joneses constructed a well in November

1974 and installed a pump in April 1975. IDWR received proof of the well construction in 1974, as is shown in the well driller's report included in Exhibit A. The Joneses did not, however, formally remit additional proof of beneficial use to IDWR by the November 1, 1979 deadline. IDWR attempted to notify the Joneses that the permit lapsed for failure to submit proof of beneficial use, but IDWR's notice was returned by the postal service as "not deliverable as addressed." See copy of envelope included in Exhibit A. Other correspondence from IDWR to the Joneses in 1979 appears to have been successfully delivered at the same address and there is no evidence in IDWR's records as to why the lapse notice was "not deliverable." In addition, there is no evidence that IDWR made any further attempt to deliver the lapse notice to the Joneses or to contact them by other means.

The Joneses later sold their farm with appurtenances, including water rights and irrigation equipment. Long View owns the farm and the well originally permitted under the Water Right.

II. ARGUMENT

A. There Is Evidence Of Beneficial Use Made During The Time Authorized By The Permit.

Evidence shows that the Joneses drilled a well to divert groundwater under the Water Right and used water from that well for irrigation. A well driller's report shows that a new well was constructed for Loel Jones and work was completed in November 21, 1974—the same date as IDWR approved the Water Right permit.¹ In April of 1975, the Joneses had a 125 horsepower pump installed. Later, in 1980, the Joneses sold the property to which the Water Right was appurtenant, including all "appurtenances" as well as irrigation equipment such as "1 vertical electric motor," "7 Alumax wheel lines – 1/4 mile each," and "7 gasoline motors for wheel

¹ All evidence suggests that this well was constructed to divert water under the Water Right: it was constructed in the same quarter-quarter Section as the Water Right's permitted point of diversion; it was constructed with a 16-inch diameter hole as stated in the Water Right permit, and it had a well depth of 245 feet, which is nearly identical to the Water Right permit's 250 foot figure.

lines.” A Trust Water Information Questionnaire signed by the Joneses’ successor in 1990 declares that the “well was put in in [the] 1970’s (mid) and used.” This evidence shows that the Joneses applied the Water Right to beneficial use.

B. There Is Reasonable Cause For Filing A Late Proof Of Beneficial Use.

There is evidence that IDWR had notice that the Joneses applied the Water Right to beneficial use. The well driller’s report for the Joneses well was stamped as received by IDWR on January 20, 1975. In 1979, IDWR requested formal proof of beneficial use, but the Joneses did not submit any. The 1975 well driller’s report, however, provided IDWR with notice that the Joneses would apply the Water Right to beneficial use. This notice of beneficial use was arguably enough for a reasonable person in the Joneses situation to conclude that they had already submitted proof of beneficial use. Accordingly, the Joneses had reasonable cause for not formally filing proof of beneficial use in 1979.

C. The Lapse Was Due To An Error Or Mistake Of IDWR.

IDWR deemed the Water Right permit lapsed but, as evidenced by the returned envelope marked “not deliverable,” apparently did not successfully notify the Joneses of the lapse. There is no evidence that IDWR made any further attempts to notify the Joneses of the lapse, even though other letters sent to the Joneses from IDWR earlier in the year were not returned. This lack of action by IDWR is particularly troubling in light of the evidence of use already in IDWR’s possession (i.e., the well driller’s report) and the dire consequences of not receiving notice of a permit lapse (i.e., the water right is invalid and the rights of the permit holder under I.C. § 42-218a diminish as time passes). Indeed, IDWR arguably has a duty to make reasonable efforts to notify a permit holder when IDWR deems a permit lapsed. Moreover, where one letter is returned as “not deliverable” when other letters sent to the same address that same year were

apparently successfully delivered, reasonable efforts must include at least one additional effort to notify the permit holder. There is no evidence that IDWR made any such effort in this case. IDWR's error in failing to make reasonable efforts to notify the Joneses warrants reinstatement of the Water Right with the original priority date of October 25, 1974.

III. CONCLUSION

Pursuant to I.C. § 42-218a, the Director should reinstate water right permit number 36-7505 with the original priority date of October 25, 1974 because there is sufficient evidence of beneficial use made during the time authorized by the permit, there is reasonable cause for filing a late proof of beneficial use, and the lapse was due to an error or mistake of IDWR.

DATED this 29th day of June 2007.

Respectfully submitted,

GIVENS PURSLEY LLP

By


Christopher H. Meyer

By


Michael P. Lawrence

I HEREBY CERTIFY that on this 29th of June 2007, the above and foregoing was served as follows:

ORIGINAL FILED

David R. Tuthill, Jr.
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

SERVICE

Randall C. Budge
Candice M. McHugh
Racine, Olson, Nye, Budge & Bailey
201 East Center, Suite A2
P.O. Box 1391
Pocatello, ID 83204-1391

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

John K. Simpson
Barker, Rosholt & Simpson, LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Larry W. Cope
Clear Springs Foods, Inc.
General Office
1500 East 4424 North
P.O. Box 712
Buhl, ID 83316

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

North Snake Ground Water District
152 E. Main Street
Jerome, ID 83338

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Magic Valley Ground Water District
809 East 1000 North
Rupert, ID 83350

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Scott L. Campbell
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Frank C. Erwin
Watermaster
Water District 36
2628 S. 975 E.
Hagerman, ID 83332

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Allen D. Merritt
Cindy Yenter
Southern Regional Office
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3033

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail



Michael P. Lawrence

WELL DRILLER'S REPORT

RECEIVED

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well. JAN 20 1975

1. WELL OWNER

Name Loch Jones
Address Idaho
Owner's Permit No. _____

7. WATER LEVEL

Department of Water Resources
Southern District Office
Static water level 150 feet below land surface
Flowing? ☐ Yes ☒ No G.P.M. flow _____
Temperature _____ ° F. Quality _____
Artesian closed-in pressure _____ p.s.i.
Controlled by ☐ Valve ☐ Cap ☐ Plug

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement
☐ Abandoned (describe method of abandoning) _____

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Other
Discharge G.P.M. _____ Draw Down _____ Hours Pumped _____

3. PROPOSED USE

☐ Domestic ☒ Irrigation ☐ Test ☐ Other (specify type) _____
☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection

9. LITHOLOGIC LOG

Hole Diam.	Depth		Material	Water	
	From	To		Yes	No
16"	0	6	Top Soil		X
	6	8	Hard PAN		
	8	12	Sandy CLAY		
	12	17	BROKEN LAVA BLACK		
	17	53	Solid GRAY LAVA		
	53	74	BROKEN LAVA loose cattering		
	74	148	BLACK LAVA		
	148	154	red LAVA Solid	X	
	154	198	BLACK LAVA crevices cattering		
	198	204	red LAVA cinders cattering		
	204	215	reddish gray LAVA solid		
	215	230	reddish LAVA broken cattering		
	230	245	Solid gray LAVA		

4. METHOD DRILLED

☒ Cable ☐ Rotary ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 16 inches Total depth 245 feet
Casing schedule: ☒ Steel ☐ Concrete

Thickness	Diameter	From	To
<u>1/4</u> inches	<u>16</u> inches	<u>2</u> feet	<u>18</u> feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

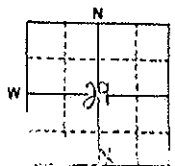
Was casing drive shoe used? ☐ Yes ☒ No
Was a packer or seal used? ☐ Yes ☒ No
Perforated? ☒ Yes ☐ No
How perforated? ☐ Factory ☐ Knife ☐ Torch
Size of perforation _____ inches by _____ inches

Number	From	To
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ☒ No
Manufacturer's name _____
Type _____ Model No. _____
Diameter _____ Slot size _____ Set from _____ feet to _____ feet
Diameter _____ Slot size _____ Set from _____ feet to _____ feetGravel packed? ☐ Yes ☒ No Size of gravel _____
Placed from _____ feet to _____ feetSurface seal depth 18' Material used in seal ☐ Cement grout
☐ Pudding clay ☒ Well cuttings
Sealing procedure used ☐ Sherry pit ☐ Temporary surface casing
☒ Overbore to seal depth

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

29 8 S 16 E

10.

Work started Oct. 30, 1974 finished Nov. 21, 1974

11. DRILLERS CERTIFICATION

Firm Name Eking Well Drilling Firm No. 21Address P.O. Box 919 Tulo Falls Date 1/2/75(Firm Official) _____

EXHIBIT

A

SALES ORDER
and
INVOICE

PUMPS, Inc.

P. O. BOX 640 - TELEPHONE 733-3264
TWIN FALLS, IDAHO

SINGER

No. 1191

Date April 25, 1975

Date Desired

Invoice 4-25-P-7092

For G. T. Newcomb, Inc.

Address 729 Commercial Ave.

Route Twin Falls, Idaho 83301

For: Lowell Jones

Customer Order No. 1298

NO.	DESCRIPTION	UNIT PRICE	AMOUNT
1	125 HP MOTOR 3 Phase 460 Volt U. S. Make 1800 RPM With Ratchet _____ Frame _____ Serial _____ Clutch Bore _____ Without Key _____ P. O. _____		
1	125 HP STARTER { Across Line } Cook Make w/ Controls & Type _____ Auto Start { } Serial _____ P. O. _____ Wiring _____ AMP SAFETY SWITCH _____ Volt _____ Phase _____ Make _____ Type _____ P. O. _____ GEAR DRIVE _____ Ratio _____ Clutch _____ Key _____ Make _____ Serial _____ P. O. _____ WL SPICER SHAFT _____ " Long _____ W DRIVE FLANGE _____ Bore _____ Key _____ W ENGINE FLANGE _____ Bore _____ Key _____		
1	8" 18 HEAD 8 " Outlet _____ Stuffing Box _____ Bolt Circle _____ Base Plate _____ Bolts 45563 Serial _____ Head Shaft _____ Nut _____ Key _____ Shaft Coupling _____ P. O. _____		
1	1 gal OILER _____ Volt Solenoid (_____ Grease Gun W. L.)		
1	8 "X 1" DISCHARGE NIPPLE { TOE } _____ Actual Length Shipped _____ TBE { }		
1	170 SETTING OF 8 "X 1 1/2 "X 2 1/2 " in _____ Length _____ Pcs. _____ "X" Top column with _____ Flange & _____ Packing Ring _____ Pcs. _____ of _____ Top Special Tubing _____ Pcs. _____ of _____ Top Special Shaft _____ Pcs. _____ "X" _____ "X" _____ "X" Std. Col./ _____ Coupling _____ Bushing _____ Monel Sleeve _____ Retainer Ring _____ Pcs. _____ "X" _____ "X" _____ "X" Bot. Col./ _____ Coupling _____ Bushing _____ Monel Sleeve _____ Retainer Ring _____		
1	12 BOWLS KH Type 6 Stages { Open } { Close } { Ports } { Bronze } { Cast Iron } Wear Rings _____ { Bronze } { Oversize } { Shaft } { In Stock } _____ { Cast Iron } { Impellers } { Standard } { Made Up } _____ Fitted _____ X _____ X _____ 45563 Serial _____		
1	8 "X 1" SUCTION { TOE } _____ Actual Length _____ Couplings _____ TBE { } _____ { Bronze } { Galvanized } { Screwed } { Welded } { Basket } _____ { } { } { } { Cone } _____		
1	8 " STRAINER _____		
	Pump and Installation _____		
	NET		\$11,000.00
	TERMS: NET 30 DAYS. INTEREST WILL BE CHARGED MONTHLY AT THE RATE OF 12 PER CENT PER ANNUM ON ALL SUMS NOT PAID WHEN DUE. SHOULD THAT RATE EXCEED MAXIMUM PERMISSIBLE UNDER APPLICABLE STATE LAW, INTEREST AT HIGHEST LEGAL RATE SHALL BE PAID. E.		

RECEIVED

MAR 1 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRUST WATER INFORMATION QUESTIONNAIRE

Department of Water Resources

Application No. 36-8295

INSTRUCTIONS: IF YOU ARE NOT INTERESTED IN HAVING THE APPLICATION PROCESSED, PLEASE COMPLETE AND RETURN THE ENCLOSED WITHDRAWAL FORM.

IF YOU WISH TO HAVE THE APPLICATION PROCESSED, PLEASE ANSWER THE FOLLOWING QUESTIONS AS THOROUGHLY AS POSSIBLE. FAILURE TO RETURN EITHER THE WITHDRAWAL FORM OR QUESTIONNAIRE IS CAUSE FOR THE DEPARTMENT TO VOID THE APPLICATION.

1a. Are you the current owner of the land or place of use described under this application? Yes X No

b. If you are not the property owner, please describe the arrangement enabling you to develop the proposed project.

2a. Has the source of water listed on this application been used to irrigate any of the land described under this same application prior to October 1, 1984? Yes X No

b. If yes, please describe the extent of development and number of acres irrigated. (Note: Uses developed after October, 1984 are considered trust water diversions and may be subject to certain restrictions and/or conditions. You may be asked to verify uses established prior to October, 1984.)

WELL WAS PUT IN IN 1979'S (mid) and used original Application filed 36-7505
THAT THAT ENTIRE AREA HAS BEEN IRRIGATED SINCE MY PURCHASE IN 1980. 160 ACRES

3. Please state the number of acres you have irrigated under this application since October 1, 1984. 160

4. If you have not irrigated lands under this application, please state the number of acres you plan to complete. N/A

5. If the permit is a supplemental filing please identify other water rights which are used on the same land.

N/A

Use the reverse side of this form if you wish to add any comments. You may mark changes on the enclosed application to designate any proposed amendments. (Note: Proposed changes which result in an expansion of use will not be considered by the department.)

I hereby assert that the responses provided above are true to the best of my knowledge. I understand that any willful misrepresentations may result in voiding of the application.

Applicant Zeppan Stahl

Date 2-23-90

MICROFILMED

JUL 27 1990

9-17-80 DWR REC TWISSARD Photo
Shows SE 1/4 IRRIG.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Sawboe
Boise, Idaho 83720

Department of Water Resources

NOV 19 1979

RECEIVED

NOT DELIVERABLE
AS ADDRESSED -
UNABLE TO FORWARD

Loel E. and Mary Jones
Route 2, Box 2373
Nampa, ID 83651

RECORDED
INDEXED

WARNING

CANCELLED OR LAPSED

This permit has been officially CANCELLED or LAPSED.

Ninety days following the date of official action this file will be DESTROYED.